



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 20, 1998

Mr. Robert Lee Little  
Office of the District Attorney, 293<sup>rd</sup> Judicial District  
P.O. Box 2426  
Eagle Pass, Texas 78853-2426

OR98-0189

Dear Mr. Little:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111944.

The Office of the District Attorney, 293<sup>rd</sup> Judicial District, received a request for all information relating to five cause numbers. You ask this office whether you may withhold the information responsive to the request for cause number K-92-28D-1. We presume, therefore, that you have released all other requested information. You claim that the information responsive to the request for cause number K-92-28D-1 is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents you have submitted.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the defendant in cause number K-92-28D-1 was convicted of capital murder. You also explain that the defendant's conviction has been upheld by the Court of Criminal Appeals and the United States Supreme Court. You argue, however, that the defendant has still not exhausted all appellate and post-conviction remedies. You now expect that the defendant's attorney will pursue federal habeas corpus relief. We find that you have shown that litigation is pending and that the requested information relates to the pending litigation. Gov't Code § 552.103(b). Thus, you may withhold information responsive to cause number K-92-28D-1 under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the criminal defendant or his attorneys in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 111944

Enclosures: Submitted documents

cc: Ms. Mandy Welch  
Burr & Welch  
412 Main Street, Suite 1100  
Houston, Texas 77002  
(w/o enclosures)